COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 054691-97**

Larry Shephard	Employee
Judge Inc. of Bala Cynwyd	Employer
Fireman's Fund Insurance Co.	Insurer

REVIEWING BOARD DECISION
(Judges Carroll, McCarthy & Horan)

APPEARANCES
Paul L. Durkee, Esq., for the employee
Gerard A. Butler, Esq., for the insurer

CARROLL, J. The employee appeals from a decision in which an administrative judge denied and dismissed his claim for payment of chiropractic and massage therapy bills. Because the judge did not make subsidiary findings of fact sufficient to address whether the treatments were reasonable and necessary under G. L. c. 152, §§ 13 and 30, and did not confine his analysis to the appropriate legal standard with regard to palliative care, we recommit the case for further findings.

Mr. Shephard suffered an industrial injury due to repetitive motion at work in August 1997. He settled his workers' compensation claim by lump sum agreement on March 15, 1999. That agreement provided for payment of continuing medical treatment related to his injury. In July 1999, the employee commenced treatment with a chiropractor, Dr. Lees, at the rate of three sessions per week. The employee also received massage therapy. He ceased taking pain medication in 2002. (Dec. 5.)

On October 9, 2002, following conference, the judge denied the employee's claim for payment of chiropractic and massage therapy bills. The employee appealed to an evidentiary hearing. (Dec. 2.)

The employee underwent an impartial chiropractic examination under the provisions of G. L. c. 152, § 11A(2). Dr. Hylemon, a board certified chiropractor, diagnosed chronic cervical strain, as well as carpal tunnel syndrome, due to repetitive activities at work. Dr. Hylemon opined that treatment continued at the same frequency forever is unreasonable, and that the employee needs to look into treatment for his carpal tunnel syndrome. (Dec. 6.) Dr. Hylemon considered that chiropractic treatment for a chronic condition should be geared toward an assessment of how much improvement the patient is realizing and how much palliative relief is reasonable. (Dec. 6-7; Dep. 33.) Without seeing improvement other than temporary pain relief, Dr. Hylemon opined that indefinite treatment at the same frequency is unreasonable. (Dec. 7; Dep. 34.) Dr. Hylemon also opined that if treatment which reduces pain and the need for taking pain medication, along with restoring some measure of lost function, is legally considered reasonable and necessary, then the employee's treatment would meet that definition. (Dep. 17-18.)

The judge adopted the opinion of Dr. Hylemon "that the chiropractic treatment and massage therapy are unreasonable and not necessary." (Dec. 7.) The judge therefore denied and dismissed the employee's claim for medical benefits under §§ 13 and 30. (Dec. 8.)

The employee argues that the case must be recommitted for the judge to make further findings on whether the subject treatments were reasonable and necessary, applying the correct legal principles. We agree.

The judge's subsidiary findings of fact do not reflect he considered the undisputed evidence that the employee received pain relief, was able to stop taking medication, and was more capable of performing life activities and remunerative work, all on account of the massage and chiropractic treatments. (Tr. 22-24, 36-37.) Instead, the judge simply adopted the opinion of the § 11A chiropractor, that

treatment which produces only temporary pain relief over an indefinite period of time for a chronic pain condition is not reasonable. (Dec. 7; Dep. 33-34.)

One problem with the judge's findings of fact, as argued by the employee on appeal, is that they do not go far enough to enable us to determine whether correct principles of law have been applied. See Tayag v. Baird Corp., 15 Mass. Workers' Comp. Rep. 60, 65-66 (2001). The law regarding palliative treatment is well established. Treatment does not necessarily need to serve the purpose of attaining medical improvement; pain reduction and reduced dependency on addictive pain medication are within the bounds of reasonable and necessary treatment. Levenson's Case, 346 Mass. 508, 511 (1963); Meuse's Case, 262 Mass. 95, 98 (1928); Lewin v. Danvers Butchery, Inc., 13 Mass. Workers' Comp. Rep. 18, 20 (1999); Santana v. Belden Corp., 5 Mass. Workers' Comp. Rep. 356, 359 (1991). Moreover, we have affirmed that treatment found to restore functioning, even if it is only on a temporary basis, may be appropriately characterized as reasonable and necessary under §§ 13 and 30. Alpert v. Chelsea Jewish Nursing Home, 14 Mass. Workers' Comp. Rep. 479, 482 (2000).

As in Lewin, supra, the § 11A doctor here disagreed with the applicable legal standard, substituting his own view of what the law should be on the subject of palliative care, and the judge erred by following his lead. "Because the judge did not confine his analysis in determining the compensability of the subject chiropractic [and massage] treatments to the appropriate legal standard it is appropriate to recommit the case." Lewin, supra (footnote omitted). See § 11C; § 11B (judge must address every issue presented at the hearing). The § 11A opinion in the context of this case must be set aside and the additional medical evidence considered, cf. Goodall v. Friendly Ice Cream, 11 Mass. Workers' Comp. Rep. 393 (1997) (where § 11A doctor rejected entire school of accepted medical thought, decision reversed and additional medical evidence required), along with the employee's undisputed testimony discussed supra.

Accordingly, the case is recommitted for further findings consistent with this opinion.

So ordered.

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Martine Carroll
Administrative Law Judge

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William A. McCarthy
Administrative Law Judge

Filed:

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Mark D. Horan
Administrative Law Judge